

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

	)	
	)	File No. EB-09-SE-192
In the Matter of	)	
	)	Acct. No. 201032100023
Enhanced Vision Systems, Inc.	)	
	)	FRN No. 0019467430

**ORDER**

**Adopted: April 5, 2010****Released: April 7, 2010**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Enhanced Vision Systems, Inc. (“Enhanced Vision”). The Consent Decree terminates an investigation by the Bureau against Enhanced Vision for possible violations of Section 302(b) of the Communications Act of 1934, as amended,<sup>1</sup> and Sections 2.803(a), 15.19, 15.21, and 15.105 of the Commission’s Rules (“Rules”)<sup>2</sup> regarding the marketing of Class B Digital Devices,<sup>3</sup> specifically, vision assistance products for the legally blind.

2. The Bureau and Enhanced Vision have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Enhanced Vision possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>4</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>5</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a), 15.19, 15.21, and 15.105.

<sup>3</sup> A Class B digital device is “[a] digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments.” 47 C.F.R. § 15.3(i).

<sup>4</sup> 47 U.S.C. § 154(i).

<sup>5</sup> 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Kamran Siminou, Chief Executive Officer, Enhanced Vision, 5882 Machine Drive, Huntington Beach, CA 92649 and to counsel for Enhanced Vision, Maureen R. Jeffreys, Esq., Arnold & Porter LLP, 555 Twelfth Street, NW, Washington, DC 20004-1206.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and Enhanced Vision Systems, Inc. (“Enhanced Vision”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Enhanced Vision complies with Section 302(b) of the Communications Act of 1934, as amended,<sup>1</sup> and Sections 2.803(a), 15.19, 15.21, and 15.105 of the Commission’s Rules (“Rules”)<sup>2</sup> regarding the marketing of Class B Digital Devices,<sup>3</sup> specifically, vision assistance products for the legally blind.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging violations of Section 302(b) of the Act and Sections 2.803(a), 15.19, 15.21, and 15.105 of the Rules.
  - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
  - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. §§ 2.803(a), 2.1077, 15.19, 15.21, and 15.105.

<sup>3</sup> A Class B digital device is “[a] digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments.” 47 C.F.R. § 15.3(i).

- (h) “Enhanced Vision” means Enhanced Vision Systems, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) “Investigation” means the investigation commenced by the Bureau’s September 30, 2009, Letter of Inquiry<sup>4</sup> regarding whether Enhanced Vision violated Section 302(b) of the Act and Sections 2.803(a), 15.19, 15.21, and 15.105 of the Rules.
- (j) “Parties” means Enhanced Vision and the Bureau.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Pursuant to Section 302(b) of the Act and Section 2.803(a) of the Rules, radio frequency devices, may not be marketed in the United States unless such devices comply with the applicable technical and administrative provisions of the Rules. Class B Digital Devices such as Enhanced Vision’s products can be authorized using either the verification, Declaration of Conformity or certification procedures set forth in Part 2 of the Rules, 47 C.F.R. §§ 2.901-2.1093. Finally, Class B digital devices must comply with labeling requirements contained in Section 15.19.<sup>5</sup>

3. On September 30, 2009, the Bureau issued a Letter of Inquiry (“LOI”) to Enhanced Vision.<sup>6</sup> The September 30, 2009 LOI directed Enhanced Vision, among other things, to submit a sworn written response to a series of questions relating to its marketing of certain vision assistance products for the legally blind. Enhanced Vision responded to the September 30, 2009 LOI on October 27, 2009.<sup>7</sup>

## III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Enhanced Vision agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

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<sup>4</sup> See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Hal Reisiger, President, Enhanced Vision (September 30, 2009) (“September 30, 2009 LOI”).

<sup>5</sup> 47 C.F.R. § 15.19.

<sup>6</sup> See September 30, 2009 LOI.

<sup>7</sup> See Letter from Maureen R. Jeffreys, Esq., Arnold & Porter LLP, counsel for Enhanced Vision Systems, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (October 27, 2009).

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation and dismiss the Complaints. In consideration for the termination of said investigation and dismissal of the Complaints, Enhanced Vision agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Enhanced Vision concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Enhanced Vision with respect to Enhanced Vision's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Enhanced Vision agrees to create within 30 days and maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will provide for the following components:

- (a) **FCC Compliance Procedures.** Enhanced Vision will develop and update as necessary appropriate FCC Compliance Procedures, particularly in the areas of labeling and user information requirements. Relevant Enhanced Vision personnel will be made aware of the FCC Compliance Procedures and will be required to follow them. The FCC Compliance Procedures will, among other things, address evaluating all new products to ensure compliance with applicable Commission rules.
- (b) **Compliance Officer.** Enhanced Vision will designate a Compliance Officer who will be responsible for implementing and administering the Compliance Plan.
- (c) **Compliance Reports.** Enhanced Vision will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty-four months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of Enhanced Vision, stating that the officer has personal knowledge that Enhanced Vision has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Linda Nagel at [Linda.Nagel@fcc.gov](mailto:Linda.Nagel@fcc.gov) and to Kathy Berthot at [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov).
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four months after the Effective Date.

9. **Voluntary Contribution.** Enhanced Vision agrees that it will make a voluntary contribution to the United States Treasury in the amount of forty five thousand dollars (\$45,000). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159

(Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Enhanced Vision will also send electronic notification to Linda Nagel at Linda.Nagel@fcc.gov and Kathryn Berthot at Kathy.Berthot@fcc.gov on the date said payment is made.

10. **Waivers.** Enhanced Vision waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Enhanced Vision shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Enhanced Vision nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Enhanced Vision shall waive any statutory right to a trial *de novo*. Enhanced Vision hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Enhanced Vision does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Enhanced Vision agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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Date

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Kamran Siminou  
Chief Executive Officer  
Enhanced Vision Systems, Inc.

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Date